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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/700,772

11/03/2003

Roy S. Berns

MIPFP062

6341

25920 7590 12/21/2007
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EXAMINER

KRASNIC, BERNARD

ART UNIT

PAPER NUMBER

2624

MAIL DATE

DELIVERY MODE

12/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/700,772

Applicant(s)

BERNS ET AL.

Examiner

Bernard Krasnic

Art Unit

2624

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) ~~the date~~ (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-12.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

JINGGE WU
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 12/06/2007 have been fully considered but they are not persuasive.

The Applicant alleges, "In the Final Office Action, the Examiner ..." in page 8 and "Applicants acknowledge that Takahashi describes showing the color difference ..." in page 8, and states respectively with regard to independent claims 1, 6, 11, and 12 that the prior art reference Takahashi intends to solve the problem that the color difference calculated from the colorimetric values is not suitable to attain good color appearance and to use an evaluation value based on the spectral reflectance and thus does not teach the claim limitation that "the color difference index is not calculated from differences in spectral reflectance of the sample color and comparative color but rather is calculated from differences in colorimetric value of the sample color and the comparative color ". The Examiner disagrees, even though Takahashi is calculating spectral reflectance distributions [see Takahashi, Fig. 12, ref. no.'s 1201 and 1202], because the prior art reference Takahashi is teaching this claim limitation where the color difference calculation is done with colorimetric values. Takahashi clearly states [see Takahashi, col. 7, lines 1-5, Fig. 12] that the color difference index may be calculated by taking the color difference between the data on the two L*a*b areas [L*a*b as disclosed in the Applicants specification in page 22 lines 23-24 may be colorimetric values] instead of using the spectral reflectance's to calculate the color difference index. Therefore claims 1-4, 6-9, 11 and 12 are still not in condition for allowance because they are still not patentably distinguishable over the prior art references.

The Applicant alleges, "with regard to independent claims 5 and 10 ..." in page 9, and states respectively with regard to independent claims 5 and 10 that Arai's CMY values are not colorimetric values and that those skilled in the art [uses other evidence "Digital Color Management: Encoding Color Management"] understand that CMY values are not colorimetric values whereas CIE-XYZ values or CIE-L*a*b values are examples of colorimetric values. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. colorimetric values correspond to CIE-L*a*b values or CIE-XYZ values) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to the other evidence, the Examiner will not enter the other evidence "Digital Color Management: Encoding Solutions" because the applicant failed to provide a showing of good and sufficient reasons why the other evidence was not earlier presented [see 37 CFR 1.116(e)]. Also, the Examiner disagrees because for example the converter 54 is clearly using "colorimetric values" as input [see Takahashi, col. 11, lines 44-48] which therefore would make the claimed limitations obvious to one of ordinary skill in the art at the time the invention was made. Therefore independent claims 5 and 10 are still not in condition for allowance.